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In re Application of :
Altmann et al. :
U.S. Application No. 09/762,082 :
PCT No.: PCT/US98/16127 :
Int. Filing Date: 04 August 1998 :
Priority Date: None :
Attorney Docket No.: CM1718F :
For: WRINKLE REDUCING COMPOSITION :

DECISION ON PETITION

This decision is in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" and "Request for Reconsideration under 37 CFR 1.137(e)" which is being treated as a Petition under 37 CFR 1.47(a) filed 02 July 2003. The above-captioned national stage application became abandoned on 08 April 2001 for failure to submit an acceptable oath or declaration within the time period set forth in the "Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" (Form PCT/DO/EO/905) mailed 08 March 2001.

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BACKGROUND

On 04 August 1998, applicants filed international application PCT/US98/16127 which claimed no priority date. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the international filing date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the international filing date, or at midnight on 04 February 2001.

On 01 February 2001, applicants filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 08 March 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a one-month time limit in which to respond.

On 02 December 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 08 March 2001 within the time period set therein.

On 23 December 2002, applicants filed petitions under 37 CFR 1.137(b) and 37 CFR 1.47(a) which were dismissed in a Decision dated 09 April 2003.

On 02 July 2003, applicants filed the present renewed petitions under 37 CFR 1.137(b) and 37 CFR 1.47(a)

DISCUSSION

The above-identified application was abandoned on 08 April 2001 for failure to respond to the Notification of Missing Requirements mailed 08 March 2001.

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional delay must be accompanied by: (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Applicants have satisfied Items (2)-(4).

In order to comply with the proper response requirement of item (1) above for revival under 37 CFR 1.137(b), applicants submitted the present Petition Under 37 CFR 1.47(a). Under the present circumstances, in order for the response requirement, item (1) above, to be satisfied, the petition to accept the application without the signature of joint-inventors Earl David Brock and Christian Leo Marie Vermote must be grantable.

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor.

a. Earl David Brock

A review of the present petition and the accompanying papers reveal that applicants have satisfied item (2), in that the applicant has shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Eric David Brock. The steps taken are sufficient to show that the nonsigning inventor refuses to execute the application.

b. Christian Leo Marie Vermote

The petition for status under 37 CFR 1.47(a) for previous nonsigning inventor is moot since the declaration filed 02 July 2003 with the present communication was executed by the previously nonsigning inventor, Christian Leo Marie Vermote.

With regard to Item (3), petitioner has provided the last known address of the missing inventor (Earl David Brock).

Accordingly, it is appropriate to accord the national stage application status under 37 CFR 1.47(a).

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

Deposit Account No. 16-2480 has been charged a \$130.00 surcharge fee under 37 CFR 492(e) for supplying an oath or declaration later than 30 months from the international filing date.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is GRANTED.

The renewed petition under 37 CFR 1.137(b) is GRANTED.

The application will be given an international filing date of 04 August 1998 under 35 U.S.C. 363, and a date of **02 July 2003** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.



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